

apply to small claimants, so they have been eligible to date to request a supplemental refund up to the cumulative \$.0016 volumetric amount. OHA has now completed processing all original crude oil overcharge refund applications and all pending requests for the 1995 supplemental payment. With the completion of all original and supplemental refund requests, approximately \$262 million will remain in the reserve for refund claimants. OHA does not expect to receive any significant additional crude oil overcharge funds.

In May 2003, the United States District Court for the District of Columbia issued a declaratory judgment in *Consolidated Edison Company of New York v. Abraham*, *supra*, which led OHA to establish procedures for making a final distribution of the entire amount remaining in the 20 percent reserve for successful crude oil refund claimants, "insofar as practicable." Slip. op. at 14.

The volumetric amount for the final crude oil refund payment will be calculated by dividing the entire amount remaining in the claimants' reserve, approximately \$262 million ("the numerator"), by the total number of gallons purchased by successful claimants, approximately 390 billion gallons ("the denominator"), yielding a volumetric of \$.00067. This method of calculating the volumetric refund is consistent with OHA's historic practice in the 1995 supplemental refund, and it is intended to distribute the entire amount remaining in the 20 percent reserve for successful crude oil refund claimants, "insofar as practicable," as envisioned by the court in *Consolidated Edison Company of New York v. Abraham*, *supra*.

When the initial volumetric refund amount was set in the 1987 Notice, OHA used the "full parity" method to place claimants seeking refunds under Subpart V on a par with the parties who could get immediate refunds under one of the several escrows established under the Stripper Well settlement agreement. *Notice Explaining Procedures for Processing Refund Applications in Crude Oil Refund Proceedings Under 10 CFR part 205, subpart V, supra*. To get an immediate refund from a Stripper Well escrow, a claimant had to waive the right to future refunds under subpart V. As explained in the 1987 Notice, the full parity method counted in the numerator of the volumetric calculation a portion of the moneys in the Stripper Well litigation, even though that amount of overcharges was not yet available for distribution to subpart V claimants as part of the 20 percent reserve. This reflected DOE's estimate that substantial

additional crude oil overcharges would be collected in future settlements, and gave potential claimants a more realistic idea of the refunds they could expect to receive under Subpart V.

OHA has consistently adhered to the principle established in the Stripper Well settlement agreement, the Modified Statement of Restitutionary Policy, and the 1987 Notice, that the volumetric refunds actually paid to successful claimants were limited by the 20 percent ceiling placed on the claimants' reserve. Thus, while the 1987 Notice established the initial volumetric refund at \$.0008, successful claimants were paid at the rate of \$.0002 per gallon until that amount could be increased by \$.0006 per gallon in 1989, as additional crude oil overcharges were collected by DOE, to reach the cumulative refund amount of \$.0008. For the supplemental refund payment authorized by OHA in 1995, the volumetric was calculated by dividing the dollar amount of crude oil overcharges in the 20 percent reserve then available for distribution by the approved gallons of refined petroleum products purchased by successful claimants in the United States during the controls period. This resulted in the total cumulative refund amount of \$.0016 per gallon paid to date. With the final distribution proposed in this Notice, the cumulative refund amount will increase to \$.00227 per gallon.

OHA will try to distribute the entire amount of the 20 percent reserve. However, since not every successful applicant will apply for this final refund payment, some money will remain undistributed. Under the Stripper Well settlement agreement, any amount that remains in the claimants' account at the conclusion of this final round of crude oil refunds should be divided evenly between the States and the Federal Government for indirect restitution.

II. Proposed Procedure for Final Distribution of Crude Oil Refunds

In deciding how to make the final crude oil refund distribution, OHA's experience gained during the past 16 years will be invaluable. For example, OHA will mail notice of the final refund distribution to successful claimants, and we intend to use the extensive database developed during the crude oil refund proceeding as the basis for the initial mailing. However, some changes are warranted in the process OHA will use for this final refund distribution. Eight years have passed since 1995 when the second round of supplemental refunds was authorized. The passage of additional time means that successful claimants have undergone even more

changes in status and address than we encountered in the two prior rounds of supplemental refunds. Although OHA decisions granting refunds ordered successful claimants to report address changes to OHA, experience teaches that many have not, and the information in our database, although the best available, has become somewhat outdated. We need to verify the information about status and address before disbursing final refunds to individual claimants.

Fortunately, information technology, particularly the Internet and the World Wide Web, is now available to a greater number of claimants since OHA last made supplemental crude oil refund payments in 1995. Thus OHA proposes to augment the normal paper application process by developing an online application system that will make it easier for many claimants to request a final supplemental crude oil refund payment. OHA will use appropriate safeguards to prevent fraud. Filing services represented many successful claimants in the crude oil refund proceeding. In addition to notifying claimants, OHA will mail notice to the filing services at the commencement of the final crude oil refund distribution. For simplicity, final refund checks will be made payable to, and mailed to, the applicant.

OHA will follow the practice used for distributing the 1995 supplemental crude oil refund, and not give direct notice to the smallest successful claimants. In 1995, we did not mail notice to claimants whose supplemental refund payments would be less than \$50. For the final crude oil refund, we will not mail notice to claimants whose final payments would be less than \$250. We continue to believe that the cost and administrative burden of mailing information to these claimants is not justified given the small amount of the refunds. As with the 1995 supplemental refund payment, however, we will accept applications from all successful claimants, as long as they are filed within the 180-day application period. Section 205.286(b) of the subpart V regulations states that OHA may decline to consider applications for refund amounts that are too small to warrant individual consideration, in view of the costs involved. Although OHA never established a floor amount for crude oil refunds, in refund cases involving overcharges on refined petroleum products OHA conducted under PODRA, it was standard practice to exclude small claims altogether. *Cf. Exxon Corp.*, 17 DOE ¶85,590 (1988). In our view, the proposed treatment of smaller claimants in the final